THE KING'S PEACE IN THE MIDDLE AGES.

(S. C. = STUBBS, SELECT CHARTERS, 8th ed. 1895.)

ALL existing civilized communities appear to have gone through a stage in which it was impossible to say where private vengeance for injuries ended and public retribution for offences began, or rather the two notions were hardly distinguished. First, revenge approved as no more than adequate, or disapproved as excessive, by rough public opinion, and, even when deemed legitimate constantly leading to reprisals and fresh feuds; next, revenge limited by customary rules and tempered by the alternative of accepting compensation of a fitting amount; then a rule compelling the injured party, or his kindred if he was slain, to be content with compensation on the proper scale if duly tendered and secured; then the addition of punishment, or substitution of punishment for compensation, turning the avenger into a prosecutor who must hand over the business of execution to public authority; finally the staying of the private avenger's hand, and the repression of crime by direct application of the power at the disposal of the State: all this may be seen, or more or less distinctly traced, in the history of criminal jurisdiction and law in many lands, and is abundantly exemplified in our own.

We find it already established in the eleventh century[1] that the king reserves a certain number of the greater crimes for his own jurisdiction. In the twelfth century the list is considerably increased, and may be said to include all serious offences against the person other than open manslaying, and also highway robbery, besides breaches of the king's special protection, false moneying, and other contempts of his authority.[2] The omission of homicide in general, so strange to modern ways of thinking, is accounted for by the fact that the rights of the kinsfolk were still supposed to be exercisible. Secret killing,[3] especially by poison or supposed

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[1] Cn. ii. 12 (Wessex), 15 (Danelaw).

[2] Ll. Hen. c. 10. This text, as printed, reckons "furtum morte impunitum" among pleas of the Crown; but it is clear from Glanv. xiv. 8 that ordinary thefts were left to the justice of the County Courts.

[3] "Murdrum enim idem est quod absconditum vel occultum," Dial. Sc. I. C. 10. So for Glanvill (xiv. 3) murder is that kind of homicide which is done in secret, so that the slayer cannot be followed with hue and cry.

witchcraft, for to this the name of murder seems at first to have been attached, could easily be reserved for the king's peculiar jurisdiction because the ancient process of an actual or commuted blood-feud, assuming as it did that the facts were notorious or at least easily verifiable, had no adequate means of dealing with such cases. But there can be little doubt that the anomaly of leaving open homicide to the kindred and the popular courts was already obsolete in practice by the time when the list in question was set down by an antiquary who perhaps would not have approved the innovation. Murder, indeed, had acquired the curious transitional meaning of a homicide committed by an unknown person for which the hundred had to pay a fine because the slain man was presumed to be a Frenchman, or more frequently, by a compendious technical usage, the fine itself.[1]

These claims on behalf of the Crown were quite consistent with the lords of private jurisdictions having power of criminal justice extending in many cases even to life and death. Indeed their exercise of such powers could be justified only by the highest theory of the king's power. It was because the king had them himself, to begin with, that he could grant them over to any great lord whom he chose to favour. On the whole the practical result was that the pursuit of serious crime was taken away from the old local courts and came under the control of the king's judges and officers.

The precise manner in which this was brought about is under the cloud which envelops most of the details both of Anglo-Saxon institutions and of their transition to Anglo-Norman forms. But it is certain that early in the twelfth century the compiler of the so-called laws of Henry I. represented the old system of blood-feud, tempered by acceptance of wergild and a very moderate amount of royal interference, as still in force; while in the last quarter of the same century, at latest, we find that the greater crimes have acquired the Norman name of felony; the prosecution of them is conducted, under the name of "appeal," by the persons who under the older law might have taken up the feud, but the procedure is under the king's authority as soon as started, and cannot be dropped without leave; the mode of trial, where the fact is denied, is by the Anglo-Norman judicial combat (or, from the early part of the thirteenth century onwards, by the verdict of a jury at the option

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[1] See Maitland, P. C. for the County of Gloucester, xxix; and examples in the text *passim*.

of the accused); and the conclusion, if the accused be proved a felon by failing in the battle or by verdict, is the sentence and execution of public justice. One grim piece of archaism remained far into the middle ages to mark the original place of tribal or family revenge. "By the ancient law," said Tirwhit, one of Henry IV.'s judges, in 1409, "when one is hanged on an appeal of a man's death, the dead man's wife and all his kin shall drag the felon to execution." "That has been so in our own time," added Chief Justice Gascoigne.[1]

As to the name of the proceeding, "appeal" originally meant accusation. In its application to disputing the judgment of a court, it meant not seeking the judgment of a higher court, as it has come to do in modern times, but charging the judges personally with giving a wilfully false judgment, or the witnesses with perjury. The charge might in either case have to be made good by combat, and down to the end of the twelfth century this was a possible course in all inferior courts.[2] Solemn acts of authority must stand, right or wrong; a judgment once made in due form is as the law of the Medes and Persians, which altereth not. You may have, at most, a personal remedy against individuals who have abused their office. A power vested in one court to reverse or vary the judgment of another was not within the conception of early English or Frankish law. Such a notion is of slow and comparatively modern growth in England. The modern usage of the word "appeal" as implying this notion seems to be not older than near the end of the thirteenth century, and to occur first, as might be expected, with reference to ecclesiastical procedure.[3]

To return to what concerns us at present, it was well understood in the thirteenth century that the criminal "appeal" was no longer a mere act of private vengeance. The king had to be satisfied for the breach of his peace as well as the aggrieved party for the injury. Hence, as Bracton expressly tells us, the death or default of the appellor did not make an end of the proceedings. On the contrary, the effect was to send the accused to be tried by a jury without the option of battle. The king takes up the charge on behalf of his own peace, as he well may and ought, for the words of the

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[1] Y. B. 11 Hen. IV. 12, pl. 24.

[2] Glanv. viii. 9. A much more elaborate practice, which does not concern us here, was developed in the 13th cent., see P. and M. ii. 666.

[3] See the quotations *s. v.* in the Oxford English Dictionary, and cp. P. and M. ii. 661.

appeal are that the act complained of was done "wickedly and in felony against the peace of our lord the king." And the accused may not offer to defend himself by his body, "since the king fights not, nor has none other champion than the country." Thus it only remained for the accused to put himself on a jury, no other mode of proof being possible.[1] But in this matter, as we shall presently see, Bracton and his masters were too enlightened for their age; and their sensible practice had to give way to an almost incredible combination of pedantry and barbarism.

Meanwhile the old public justice, applicable to cases where there could be no question of blood-feud — practically, that is, to theft — was becoming the king's justice too. The men of the hundred who charged a suspected offender on the strength of their own knowledge, or of common fame, now acted under the direction of the king's officers; and the withdrawal of religious sanction from the ordeal by the Church in 1215 brought the further proceedings under the same authority by the downright need of some new regulation. The action of the Lateran Council was promptly enough[2] acknowledged by the king's calling for appropriate measures. It seems likely that the ordeal was already discredited. In the twelfth century clerical narrators not only exalted the merits of the saints by whose intercession men were miraculously healed after having failed in the ordeal and suffered as felons, but almost went out of their way to assert the victim's innocence, though the miracle might well enough have been represented as the reward of an offender's subsequent contrition. The so-called judgment of God was now regarded as a possibly oppressive or fraudulent judgment[3] which might call for supernatural redress. On the other hand the temporal power was not disposed to regard acquittal on a trial by ordeal as conclusive in the prisoner's favour. A man of bad repute who had been sent "to the water" on a charge of murder or other grave crime by the witness of the county was not treated as innocent by the later twelfth-century practice. Under Henry II.'s ordinance, he had to leave the kingdom and be content not to forfeit his goods.[4] A mode of trial so little respected had

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[1] Bract., fo. 142 *b*.

[2] In 1219, P. and M. ii. 650, Thayer, Preliminary Treatise on Evidence, 69.

[3] See the case of Ailward, Bigelow Pl. A. N. 260, Materials for Hist. St. Thomas (Rous series), i. 156, ii. 171. For a similar case where the trial had been by battle, cp. Maitland, P. C. for Gloucester, 142.

[4] Assizes of Clarendon (1166), c. 14, and of Northampton (1176), c. 1.

become untenable. When ordeal was put out of the way, to all seeming unregretted by any one, there was no method of final proof to set in its place other than the new and royal method of inquest. If the accusing body had been turned into the final judges of the fact, some sort of inquisitorial procedure would probably have been the result, and the Grand Jury might have become an official staff with a Public Prosecutor at its head. But the law maintained the old view that the indictment, as from this point we may begin to call it, was only the voice of common fame, which was enough to put a man in jeopardy but not to codnemn him. The prisoner was entitled to call for a final vote of the lawful neighbours, to "put himself on the country." The same men might now be asked for their definite opinion, but they were reinforced by jurors of another hundred and of four townships. If the combined jurors declared that they positively thought the prisoner guilty, he stood condemned. Only in the middle of the fourteenth century were members of the jury of indictment prohibited from serving on the jury of trial.[1]

It will be observed that the new process is brought into play, in point of form, by the prisoner's action. He is not sent to a jury as he would have been sent to the ordeal; he puts himself upon its verdict. Before long the question arose what was to be done with a prisoner who would not put himself on the verdict of a jury in the case of either an appeal or an indictment; this is not a question directly before us now, but it was inevitable and gave much trouble. When the "judgment of God" by ordeal ceased to be available it seemed, on the whole, to the medieval English mind that the prisoner — except where the facts were too manifest to need further proof — could not be required, as matter of strict right, to submit himself to any form of human judgment. Bracton, as we saw, was bold on the side of common sense in the case of an appeal; as to an indictment he only says it seems the prisoner can be compelled to defend himself by the country for want of other manner of proof. Some bold and enlightened judges, probably Bracton among them, were prepared to dispense with consent or enter a fictitious consent to be tried by a jury on the prisoner's behalf.[2] But the formalist view prevailed: namely that trial by the

[1] Thayer, Preliminary Treatise, 82, 83.

[2] Case from Warwickshire Eyre, A. D. 1221. Select Pleas of the Crown, ed. Maitland (Seld. Soc.), No. 153. Appeal of murder brought by widow against one Thomas. She is adjudged disqualified because she has married again and the second

country could not be without the prisoner's submission, but refusal to submit was an independent offence, in the nature of contempt of the king's authority, for which the recusant might be punished in any manner short of death: imprisonment, rigorous imprisonment under conditions barely compatible with living, or, as the practice appears to have been settled in the course of the fourteenth century, with aggravations amounting to death in fact though not in terms. In this way respect for the letter of the subject's rights and dread of usurping jurisdiction led the judges to the clumsy and barbarous expedient of the *peine forte et dure*, which, to the law's disgrace, remained possible, and was sometimes put in force, down to quite modern times.[1] But, strange as were the limitations imposed by the logic of thirteenth-century lawyers on the king's jurisdiction, the jurisdiction had in substance come to the king's hands. What remained in Bracton's time of the old system of private and vindictive prosecutions became absorbed in one or another of the new varieties of civil procedure devised by the clerks in the king's chancery and sometimes by the judges themselves.

We have mentioned the exceptional case — perhaps not so very exceptional in days when open violence was frequent — of a crime being too manifest for any formal proof to be required. A few words of explanation must now be added. For more than a century after the Conquest, and much later in some local jurisdictions, the stern rule of the popular courts against open and notorious crime held its ground. A criminal taken red-handed was not entitled to any further defence or trial before the king's justices, whether he were a murderer with his bloody weapon or a robber with his stolen goods, "seised" as men then said "of the murder or theft," so that the fact was undeniable before the lawful men who apprehended him. This was deliberately confirmed as late as 1176:[2] and the jurisdiction, as long as it existed, remained with the county court save in the case of crimes

husband makes no appeal; "et ideo inquiratur veritas per patriam. Et Thomas defendit mortem set non vult ponere se super patriam. Et xij juratores dicunt quod culpabilis est de morte illa, et xxiiij milites alii a predictis xij ad hoc electi idem dicunt, et ideo suspendatur." Similar process in a case of theft, in same eyre, No. 157. The verdict of a jury reinforced by a second jury of double their number was apparently taken as equivalent to ocular proof.

[1] P. and M. ii. 649; Stephen, Hist. Cr. L. i. 298, 299; Thayer, Preliminary Treatise, 74.

[2] Assize of Northampton, art. 3, S. C. 151.

specially reserved for the Crown. In the Gloucestershire records of 1221 we read that certain evil-doers slew a servant of the Bishop of Bath in his master's house. Four men charged with the killing were taken with stolen goods, the murder having, it seems, been incidental to theft or housebreaking. Records show this as a very common state of things: and, as there was nothing more to be lost by adding murder to robbery, already a capital offence, we need not be surprised. The men admitted the death, and were summarily hanged, not for the murder, which was not within the county court's jurisdiction, but for the manifest theft, which was.[1] The same rule was applied by the king's judges to manslaying, down to the middle of the thirteenth century.[2] It was not necessary that the judgment should be rendered immediately, but only that the damning circumstances of the offender's arrest "super factum" should be promptly recorded by good witness. The written records of such cases are of a simplicity befitting the summary character of the proceeding: "Wakelin Ralph's son slew Matilda Day with a knife, and was taken thereupon with the knife all bloody, and this is witnessed by the township and twelve jurors, and so he cannot deny it; let him be hanged; he had no chattels."

An important exercise of the king's increasing control over criminal business was the constitution or definition (it is not certain which, nor very material) of the office of coroner in 1194.[3] The most important function of the coroner was from the first the holding of inquests on the bodies of persons who had died by violence or accident, or in circumstances giving rise to

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[1] Maitland, P. C., for the County of Gloucester, No. 280 (A. D. 1221). Magna Carta had already forbidden inferior courts to hold pleas of the Crown; it would seem that summary disposal of a "hand-having" thief was not deemed a *placitum* at all.

[2] Bracton, fo. 137; Note Book, No. 138; P. C. for County of Gloucester, No. 394, where we have the form of judgment by the king's judges in such a case: "consideratum est quod ipse non potest defendere et ideo suspendatur." The twelve jurors mentioned here and in the similar case No. 174 (translated in our text) are an accusing body, not the final judges of the fact, that is, they are more like a grand than a petty jury as we understand those terms. What Bracton calls the "violent presumption" takes the place of any further proof or trial. Sir James Stephen's comment (Hist. Cr. L. i. 260) is rather misleading, as its language ignores this distinction.

[3] Præterea in quolibet comitatu eligantur tres milites et unus clericus custodes placitorum coronæ, "Judicial Visitation," art. 20, S. C. 260; Gross, Introduction to Select Coroners' Rolls, Seld. Soc. 1896. The phrase "custodire placita coronæ" was in use earlier; the doubt is how much of the significance given to it in 1194 was new.

suspicion; and that function continues to this day as part of the machinery of our criminal law, side by side with the jurisdiction of justices of the peace and to some extent overlapped by it, but not superseded. In the Middle Ages the coroners also exercised judicial powers in criminal and sometimes in civil business, which did disappear, partly under the express prohibition of Magna Carta, whereby neither the coroners nor the county court were to hold pleas of the Crown,[1] partly by disuse as the office of a justice of the peace was brought into working order. They supervised the execution of capital justice in the privileged jurisdictions of lords who had that franchise, and thus had more extensive rights than the sheriff, who, by the terms of such local privileges, was excluded from interference within their bounds. Being the king's officers, but elected by the men of the county, the coroners formed a direct link between the Crown and the people and a check on the intermediate lords.[2]

Within a year of the creation or better settlement, whichever it was, of the office of coroner, we hear of knights being assigned in each county to take an oath of all men over fifteen years of age for the maintenance of the king's peace and the effectual pursuit of evil-doers.[3] The relation of these keepers of the peace to the sheriff and the coroners (if indeed they were always different persons from the coroners) is not very clear. However, they were the predecessors of the conservators of the peace first appointed under authority of Parliament in 1327, and known as justices of peace (we now say 'of *the* peace,' but the shorter form was the common one down to the eighteenth century) from the time, about a generation later, when distinctly judicial functions were conferred on them by further legislation. The office of justice of the peace is the most ancient of which it can be said that its powers and duties are wholly derived from statutes.

For more than two centuries after the Conquest the king's peace itself was liable to interruption by the death of the reigning king. It perished with him; the new king was not deemed to be fully king, nor so styled, until he had been crowned; and

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[1] C. 24. This was not held to apply to summary and interlocutory business. Cp. as to the county court p. 182, above, and see Bracton, 150 *b*.

[2] Gross, *op. cit.* xxv.–xxx.

[3] S. C. 264. And see Const. Hist. c. 15.

during this interregnum there was no power available to preserve order but the resources of the old popular jurisdiction, doubtless more and more enfeebled by the diminution of their importance in normal times. Evil-doers were not slow to seize such an opportunity when it came. We read in the English Chronicle, under the date of 1135, that on the death of Henry I. "there was tribulation soon in the land, for every man that could forthwith robbed another." But when Edward I. succeeded to the throne in November 1272, being then far away from England on the crusade, the danger and inconvenience of allowing such an interregnum were perceived to be intolerable; and the king's council forthwith caused his peace to be proclaimed throughout the kingdom, declaring the reason in his name in these words: "for rendering justice and keeping of the peace we are now and henceforth"— not merely after coronation — "debtors to all and sundry folk of this realm."[1] It must have seemed a bold measure at the time, but its wisdom was so manifest that it was not merely accepted as a temporary and extraordinary remedy, but became a conclusive precedent for all future demises of the Crown. The doctrine of the king's peace being put in suspense by the king's death does not seem to have been ever heard of again.

One reason for the ease with which the reform was made may perhaps have been that its omission would have thrown the machinery of justice out of gear more extensively and conspicuously than at any previous time. The writ of trespass was fast coming into use in the course of Henry III.'s reign. During the twenty-two years between the middle of the century and his death it became common.[2] We think of an action of trespass nowadays as a purely civil remedy, a means of recovering damages if the plaintiff succeeds; and that was no doubt its main object and advantage even from the first. But it was also a penal and semi-criminal proceeding, and preserved traces of this character down to modern times. The trespass was complained of and dealt with as a punishable breach of the king's peace, and the plaintiff was bound to allege force and arms and breach of the peace in order to give the king's court jurisdiction; without those words it was only a matter for the county court. In fact this action was, in its original form, closely connected with the distinctly criminal procedure by way of "appeal" for felony. One might almost regard

[1] S. C. 448.

[2] P. and M. ii. 525–6.

it, using the analogy of modern French procedure, as the civil side of such an appeal, which became separated by some ingenious experiment or happy accident, and started on a new career of its own. To regard the king's peace as capable of temporary suspension in 1272 would have been to deprive suitors of a remedy which was already becoming popular, and showing the first promise of its vast future developments. It belongs to another context and a later period to see how forms of action derived from the semi-criminal writ of trespass became the most ordinary and efficient instruments of purely civil justice in dealing with questions of property and contract.

It will be observed that there was no centralized authority, as indeed there still is none, for dealing with the prevention or detection of crime. Royal justice aimed not at superseding local administration, but at controlling and stimulating it. The work of the king's officers in every department of public law, and of the local officers and courts who were bound to assist them, was kept up to a generally uniform standard by the periodical journeys of the king's itinerant judges. The more general and searching visitations have to be distinguished from the minor judicial delegations. There were frequent missions of learned persons charged only to dispose of certain kinds of pending causes and matters, usually the "assizes" introduced in Henry II.'s time, and developed in the course of the thirteenth century, for the recovery of land from wrongful possessors. Judges might even be sent out to take only one particular named case, under a special commission as we should now call it.[1] Their authority depended on the terms of the commission in each case, as the authority of justices of assize does to this day; the difference is that the commissions of justices of assize (who superseded the justices in eyre at a later time, and must not be confounded with them) have run in a fixed form for centuries, whereas the heads or articles of the eyre were subject to variation. Some sort of routine, however, was acknowledged early in the thirteenth century. More especially there was a general and comprehensive mission with unlimited jurisdiction and a wide administrative authority to see that the Crown got its dues of every kind, which took place at intervals of some years in every

[1] Bracton, fo. 111. This was of course possible independently of the clause of Magna Carta which led to the commission of assize properly so called, and, as I read Bracton, it was a known thing in the earlier practice. And see "Circuits and Assizes" by Mr. G. J. Turner, in 3 Enc. Laws of Eng. 26.

part of the country. This may conveniently be called a general eyre; it involved a rigid scrutiny of the criminal records of the county since the last visitation, and commonly produced a good many fines. These, and the burden of entertaining the justices and their retinue, caused the advent of a general eyre to be anything but welcome. Attempts were made to establish a custom not to have it in the same place more than once in seven years.[1] On these occasions the county court was summoned, but acted in the subordinate capacity of giving information and deputing its chief men to talk over business with the judges, and, we may well suppose, to be instructed by them in the latest royal improvements of procedure and finance.[2] The men of the county were answerable for having all the Crown's business properly brought before the itinerant justices; and that business would include everything, from forfeitures of felons' goods to complaints of sales by unauthorized measure or petty extortions by bailiffs. Directly or indirectly, there was always an eye to the king's dues. As Mr. Maitland says, "a distinction between the doing of penal justice and the collection of the king's income is only gradually emerging. The itinerant judge of the twelfth century has much of the commissioner of taxes."[3] Failure to find criminals, what with murder-fines and amercements for failing to produce one's townsmen, was more fruitful of revenue than judicial sentences. Unpleasant as the whole process was for the country-side, for it was a costly forced purchase of justice at best, there must have been a great deal of civic education in it.

So far we have only hinted at the transformation of the jury in criminal cases from a special commission of inquiry into a regular and necessary tribunal, and from a piece of superior administrative machinery into a popular and representative institution. Many details are still obscure, but we know that the process was substantially completed about the middle of the thirteenth century. What interests us just here is to observe that nothing but the king's power, half consciously guided by the necessities of the time, could have accomplished this. There were no means available for reforming the hopelessly antiquated procedure of the old popular courts, and indeed there was still, in the modern sense, no

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[1] Stubbs, C. H. c. 15, § 235.

[2] S. C. 358; Bract. 115 *b*; Maitland, Pleas of the Crown for Gloucester, xxiv.

[3] *Op. cit.* xxvi.

legislature at all. Executive and judicial authorities, under the king's direction, had to innovate for themselves in the lines of least resistance. As early as 1166,[1] the old accusation by the common report of the country-side became a "presentment" by definite persons representing the local knowledge of all classes, who were bound to inform the king's judges or the sheriff. In our time the Grand Jury no longer consists of twelve of the more lawful men of the hundred and four of the more lawful men of every township; but it still exists, it is still called a Grand Inquest as its most official and solemn name; the foreman is sworn "as foreman of this Grand Inquest for our Sovereign Lady the Queen and the body of this county." The form of the oath still binds the grand jurors to present any crimes undiscovered by the officers of the law which may come to their notice otherwise than by being expressly given them in charge; that is, to accuse any one whom they suspect of having committed a crime even if no one has taken steps to prosecute him; and though there is no occasion to do this in modern times, grand juries not unfrequently make presentments of what they conceive to be the opinion of the county as to the increase or decrease of criminal offences, or desirable amendments of the criminal law in substance or administration. It is to be remarked that the form of the oath is not of Anglo-Saxon or popular, but of Frankish and official origin.[2] There was nothing about the procedure in any way repugnant to popular tradition or habits; nevertheless it was new, royal, and in ultimate parentage exotic. Not the pretence of an impossible freedom from foreign elements, but the power of assimilating exotic material to serve its own purposes and to be leavened with its own constant spirit, was already, as it has ever since been, the real glory of our Common Law. Sometimes it is asked, what is the use of a grand jury nowadays? The question ought, perhaps, rather to be whether the saving of a little trouble and expense would be an adequate compensation for abolishing a dignified and at worst harmless function which has been part of the machinery of justice in England for more than eight centuries. However, the grand jury is sometimes able to stop an obviously malicious or frivolous prosecution and spare an innocent person the pain and scandal of going into the dock.

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[1] Assize of Clarendon, Stubbs, S. C. 143.

[2] See L. Q. R. ix. 278–9.

The petty jury acquired its modern position, that of a body of judges appointed to decide on the facts according to the evidence and not otherwise, only by a gradual process. As regards the criminal jury we still know little of the details. In the fifteenth century the functions of jurymen were coming near their present character; in the sixteenth we have a description of the course of a trial which, but for the prisoner not being allowed to employ counsel against the Crown, would be accurate in all essentials at this day. Sir Thomas Smith,[1] writing chiefly for the information of learned foreigners, insists on the public and oral character of the procedure, a matter of commonplace to Englishmen but strange to men living under systems derived from the later Roman law. "All the rest" (except the written indictment) "is done openly in the presence of the judges, the justices" [of the peace], "the inquest, the prisoner, and so many as will or can come so near as to hear it, and all depositions and witnesses given aloud, that all men may hear from the mouth of the depositors and witnesses what is said." As has already been hinted, there was nothing about the origin or the early forms of the jury, or in particular of the criminal jury, to make it in any sense a popular institution. There was no manifest reason why it should not become a mere instrument of official power, as indeed the Tudor sovereigns and their ministers tried to make it in affairs of state. There was no obvious probability that the verdicts of juries would be just, or independent, or free from corruption. Indeed they were far from satisfying all these conditions in the disorderly times of the later Middle Ages. No one could even have assigned any definite reason, down to the fourteenth century, why a jury should not hold a private inquiry out of Court; and while the procedure was unsettled, there were one or two practices tending that way which might conceivably have become the model instead of first being exceptional and then disappearing. But the national instinct for publicity prevailed. The most Norman and the most royal element in the machinery of justice became a security against royal encroachment, a bulwark of freedom so beloved of Englishmen that pious fable ascribed its introduction to the hero-king Alfred.

Sir Frederick Pollock.

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[1] Commonwealth of England, Bk. 2, Ch. 26.